Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 469 of 2003

United India Insurance Company
Limited, through its Divisional Manager,
Divisional Office, Nainital Road,
Tikonia, Haldwani, District Nainital.
..... Appellant.

Versus

1. Smt. Geeta Devi W/o late Amar Singh,
2. Surjit Singh Bhaisora S/o late Amar Singh,
   R/o 8 Khera Colony, Rudrapur,
   P.S. Rudrapur, District Udham Singh Nagar.
3. Satyanarayan S/o Sri Chetram,
   R/o Jwala Line, Ram Nagar,
   District-Nainital (Owner of Vehicle).

..... Respondents.

.....

Sri D.S.Patni, learned counsel for the appellant,
Sri D.K.Sharma and Sri Rakesh Thapliyal, learned counsel for the respondents 1 & 2.
Sri Nand Prasad, learned counsel for the respondent No.3

Date: 2nd September, 2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the United India Insurance Company Ltd. under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 01.10.2003 passed by the Motor Accident Claims Tribunal/III Additional District Judge, Udham Singh Nagar in Motor Accident Claim Case No. 109 of 2002, whereby the claim petition was decreed against the Opp.party No.2-United India Insurance Company for a compensation of Rs.4,40,000/- alongwith interest at the rate of 9% per annum from the date of claim petition till the date of actual payment.

2- Brief facts giving rise to this appeal are that on 19.11.2001 at 9.00 p.m. the deceased Vikram Singh Bhaisora was coming with Arvind Kumar Misra Advocate through scooter from Haldwani towards Rudrapur. When they were 12 Kms. Away form Haldwani on Haldwani-Rampur road, Truck No. UP 02-7660, which was being driven very rashly and negligently dashed the said scooter. In the said accident Arvind Kumar Mishra, who was driving the scooter, and Vikram Singh Bhaisora who was pillon rider sustained grievous injuries. They both died on the spot due to said injuries. Deceased was 29 years old at the time of accident and he was practicing advocate in District Courts, Rudrapur (Udham Singh Nagar). The claimants, who are the dependents being mother and younger brother of the deceased, filed the claim petition on account of death of deceased.

3- The opposite parties contested the claim petition before the Tribunal by filing their separate written statements. The Opp.party No.1 admitted the ownership of the offending Truck No. UP 02-7660 but he denied all the allegations of the claim petition. He further alleged that the accident did not occur by the said truck and on the said date and time the said truck had gone to Bhatronjkhan, Devli khet, Daura Khal, Binsar Mahadev carrying the goods. A false F.I.R. was lodged deliberately involving the said truck. The Opposite party No.2-Unirted India Insurance Company also denied the allegations of the claim petition in its written statement. The involvement of said Truck No. UP 02-7660 was also denied. It was further alleged that the accident occurred due to negligence of Arvind Kumar Misra who was driving the scooter. On the pleadings of the parties, the Tribunal framed necessary issues and on the basis of the evidence adduced by the parties allowed the

claim petition accordingly. Feeling aggrieved, the United India Insurance Company has come up in this appeal.

4- The learned counsel for the appellant contended that the truck in question on the date of alleged accident i.e. 19.11.2001 was not at Haldwani and the said truck had gone to different places carrying the goods. The findings recorded by the learned Tribunal in the impugned awards with respect to involvement of said truck are perverse and are not based on cogent evidence and are liable to be set aside. We have gone through the material on record and perused the Impugned awards. The claimants in support of their case adduced Smt. Geeta Devi as P.W.1, Sri Sunil Khera Advocate as P.W.2 and Sri Diwakar Pandey Advocate as P.W.3. The Opp.party No.1 did not adduce any oral evidence but filed copy of registration, driving licence, insurance, permit of the offending truck etc. The Insurance Company also filed said papers besides technical inspection report as documentary evidence. The Insurance Company also examined Sri Chandra Pal as D.W.1 in the case.

5- The learned Tribunal while dealing with issue No.1 held that P.W.2 Sri Sunil Khera Advocate and P.W.3 Sri Diwakar Pandey Advocate on oath stated that they had seen this incident which was caused by Truck No. UP 02-7660 being driven by its driver rashly and negligently. The witnesses were cross-examined by the Opp.parties. The Opp.parties did not rebut the said evidence by adducing any cogent evidence. Hence the testimonies of P.W.2 & P.W.3 cannot be ignored. Further, after the investigation chargesheet was submitted by police of P.S.-Haldwani against Gopal Ram-driver of the offending truck. Hence the presence of the truck was fully proved. In the investigation police also reached at the conclusion that the said accident

occurred by truck No. UP 02-7660, which was being driven by its driver rashly and negligently. Keeping in view the facts and circumstances of the case, we are of the opinion that the findings given by the learned Tribunal on the basis of the evidence on record are correct which do not warrant any interference. Since the said truck was insured with the United India Insurance Company at the relevant time, hence the Insurance Company was rightly held liable to pay the compensation.

6- The learned counsel for the appellant further contended that he driver of the alleged truck was not made party in the claim petition due to which the impugned award cannot stand on account of non-joinder of necessary party. In the claim petition the owner of the vehicle in question and the insurer have been made party. They both are contesting the case throughout. The insurer did not deny the insurance of the offending vehicle. The Insurance Company cannot absolve form its liability only if the driver of the offending vehicle was not made party in the case.

6- The learned counsel for the appellant further contended that the amount awarded is excessive. It is clear from the oral as well as documentary evidence, that deceased Vikram Singh Bhaisora was a practicing lawyer. According to the assertions made in the claim petition, the deceased was 29 years old and he was getting Rs. 15,000/- per month from the practice but no evidence oral or documentary has been filed in support of this assertion. In absence of any evidence in support of the case the Tribunal has held the income of the deceased as Rs. 5000/- per month. We are of the opinion that the Tribunal did not commit any error in holding the income of the deceased as Rs. 5,000/- per month and rightly calculated the amount of compensation keeping in view the dependency and the

facts and circumstances of the case. This argument of the learned counsel for the appellant has no force and is rejected. Accordingly, the appeal has no force on merit.

7- The appeal is dismissed. The impugned award is upheld. No order as to costs. The amount deposited in the appeal shall be remitted to the Tribunal concerned within a period of four months.

(B.S. Verma,J.) **(P.C.Verma,J.)**

02.09.2004
P.Singh